

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION FIELD OPERATIONS TRAINING MANUAL

Volume - II: Compliance

Chapter 4: Compliance Review Procedures and Guidelines for Financial Responsibility and Commercial/Economic Regulations

Par. 1. Part 387

Illustration 4-1: Warning Letter About Financial Responsibility

1. PART 387

- a. If the motor carrier is subject to Part 387, verify the carrier has obtained and has in effect the required minimum level of financial responsibility. Request to see the carrier's form MCS-90 (endorsement), form MCS-82 (surety bond), or self-insurance authorization. If the motor carrier has an insurance policy, verify the insurance is currently in effect. If the motor carrier has an insurance policy and cannot produce a form MCS-90, search through the insurance policy documents for the form. If a prepared form MCS-90 cannot be found, but the motor carrier has the minimum level of financial responsibility in effect, cite the carrier for failure to maintain the required proof of financial responsibility (§ 387.7(d)(1)) and include the following statement in the recommendations section of Part B of the CR report: "A properly executed copy of form MCS-90 (Endorsement), MCS-82 (Surety Bond), or self-insurance authorization must be filed with the Federal Motor Carrier Safety Administration, (add appropriate address) within 10 working days from the date of this document."
- b. If the motor carrier does not have the required minimum level of financial responsibility in effect **OR** cannot show proof of the required financial responsibility, issue or send the warning/advisory letter in Appendix (Illustration II) to an owner, partner, or corporate officer. The letter may be hand-delivered to an appropriate individual. If done so, retain a copy of the letter and note the date, time of day, and place of the delivery. If hand-delivery is not feasible, send the letter to an appropriate individual by certified mail with return receipt requested.

- c. Enforcement action must be initiated against a motor carrier that does not have the required minimum level of financial responsibility. If a motor carrier conducts operations without a sufficient level of financial responsibility after receipt of a warning/advisory letter, additional counts of enforcement should be taken against the carrier. A 10 working day grace period from the closeout of the CR is allowed for those motor carriers that have met their minimum level of financial responsibility through insurance coverage, but did not have a properly executed form MCS-90, to submit proof of financial responsibility. If the motor carrier submits a properly executed form MCS-90 within 10 working days from the closeout of the CR showing the carrier had the required level of continuous insurance coverage in effect from the first day of the carrier's current policy term, enforcement action may be waived. Do not hold the CR report while waiting for receipt of proof of financial responsibility. Forward the CR report as usual to the appropriate office. If the form MCS-90 is received before the report is forwarded through channels, do not amend the CR report because compliance status is determined at the time of the CR. Enforcement action should be initiated against a motor carrier that fails to produce proof of the applicable minimum level of financial responsibility within 30 working days from closeout of the CR.
- d. **Self-insurance and safety ratings:** When the laptop CR software shows that an authorized for-hire motor carrier that is self-insured has a proposed safety rating of conditional or unsatisfactory, the investigator must contact the highest ranking motor carrier official (sole proprietor, partner, or corporate officer level) and notify him/her that the company has a proposed conditional or unsatisfactory safety rating. Advise the motor carrier official that self-insurance authority is no longer valid 30 calendar days after issuance of a final safety rating that is conditional or unsatisfactory. Immediately after closeout of the CR, the investigator must advise his/her State Director of the proposed conditional or unsatisfactory safety rating of the authorized for-hire, self-insured motor carrier. The State Director must notify the Office of Enforcement and Insurance Compliance Division in FMCSA headquarters of the situation.
- e. When a CR is conducted on a for-hire motor carrier of a regulated commodity, or passenger, the carrier's compliance with the registration and insurance filing requirements must be determined. Generally, the only unregulated commodities are unprocessed agricultural commodities such as fresh fruits and vegetables. Prior to the initiation of the CR, check the motor carrier's current status and history regarding registration and insurance filing by accessing the licensing and insurance information system which is maintained by Volpe at <http://fhwa-li.volpe.dot.gov/>.

- f. Unregistered motor carriers must be cited for violating 49 U.S.C. 13901. **Do not cite unregistered carriers for insurance filing violations.** The investigator must notify an owner, partner, or corporate officer that for-hire motor carrier transportation of motor carrier operations must cease until the company has submitted an application and it has been processed and a certificate of authority issued. The investigator must advise this motor carrier official that operating in violation of the registration requirements will subject them to civil penalties. Regarding enforcement action, unregistered motor carriers will be allowed a 10 working day grace period from the closeout of the CR to submit an application. Upon expiration of the grace period, verify whether the motor carrier has applied by initially checking the licensing and insurance information system. If the system shows no receipt of an application, check with FMCSA Headquarters for verification. Enforcement action should be initiated against an unregistered motor carrier when an application is not received from the carrier within 30 working days from the closeout of the CR. In addition, enforcement action must be considered against a motor carrier that continues operating without proper registration after being informed of the violation during the CR.
- g. If a registered for-hire motor carrier of a regulated commodity or passenger has no public liability insurance coverage or an insufficient level of coverage, a violation of § 387.7(a) must be cited, and enforcement action must be initiated. In this case, a violation of § 387.7(d) must not be cited for failing to maintain proof of financial responsibility at the principal place of business.
- h. If a registered for-hire motor carrier of a regulated commodity or passenger does not have public liability insurance on file with Office of Enforcement and Compliance (Insurance Compliance Division) (as required by § 387.301(a)) and does not have a form MCS-90 at its principal place of business (as required by § 387.7(d)(1)), both violations must be cited on the CR report. The investigator must notify an owner, partner, or corporate officer that for-hire motor carrier operations must cease until appropriate insurance is on file. Regarding enforcement action, the motor carrier will be allowed a 10 working day grace period from the closeout of the CR to correct both violations. If these violations are corrected within 30 working days, enforcement action should not be taken against the motor carrier for operating without appropriate insurance on file. Enforcement action should be initiated against a motor carrier that fails to make an insurance filing within 30 working days from the closeout of the CR.

- i. Common motor carriers are required to have cargo insurance. Contract motor carriers are not required to have cargo insurance. Enforcement action must be initiated against a common motor carrier that is operating without cargo insurance in effect. Common motor carriers that have cargo insurance in effect, but do not have cargo insurance on file with Office of Enforcement and Compliance (Insurance Compliance Division), must be cited for violating § 387.301(b), and such carriers will be allowed a 10 working day grace period from the closeout of the CR to file. Enforcement action must be initiated against a common motor carrier that fails to make a cargo insurance filing within 30 working days from the closeout of the CR.
- j. For registration or insurance filing violations, the number of counts or instances to document for enforcement action is dependent upon the scope of the violations and what is necessary to encourage the motor carrier to comply. Documentation of these violations (i.e. bills of lading, freight bills, delivery receipts) must show different shipments on separate days, and prove the for-hire interstate transportation of regulated commodities.
- k. Determine whether the company operates as a property broker. If yes, determine whether the company has been issued a property broker's license by FMCSA, and has a current surety bond or trust fund agreement on file with Office of Enforcement and Compliance (Insurance Compliance Division). Failing to register as a property broker is a violation of 49 U.S.C. 13901. Failing to file a surety bond or trust fund agreement is a violation of 49 CFR § 387.307(b). The company will be allowed a 10 working day grace period from the closeout of the CR to correct the bond filing requirements. Enforcement action should be initiated against a motor carrier/property broker that fails to apply for authority to engage in operations as a property broker and/or file a surety bond or trust fund agreement within 30 working days from the closeout of the CR. Enforcement action must be initiated against a motor carrier/property broker that fails to have a surety bond or trust fund agreement in effect.
- l. For-hire motor common carriers of household goods must offer arbitration on loss and damage claims. Determine whether this requirement has been met. Most carriers meet this requirement through an association membership. If the carrier has no such membership, inquire about how arbitration is handled. Failure to have an arbitration program is a violation of 49 U.S.C. 14708. If the motor carrier has no arbitration program, the investigator must contact the highest ranking motor carrier official (sole proprietor, partner, or corporate officer level) and notify him/her that the company is in violation of this requirement. Explain how compliance can be attained. Notify the motor carrier official that revocation of the company's

operating authority may occur if noncompliance continues. Immediately after closeout of the CR, the investigator must advise his/her State Director of the motor carrier's lack of an arbitration program. The State Director must notify the Office of Enforcement and Compliance of the situation.

- m. Determine whether the for-hire motor carrier has filed a form BOC-3 (in compliance with 49 CFR Part 366) designating a process agent in each State that it is authorized to operate and for each State traversed during such operations. The motor carrier will be allowed a 10 working day grace period from the closeout of the CR to correct any violation of 49 CFR Part 366. Enforcement action should be initiated against a motor carrier that continues to be in violation of 49 CFR Part 366 within 30 working days from the closeout of the CR.